

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

JOHN R. VAN ORDEN,)
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Plaintiff,)
)
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v.) No. 4:08CV512 FRB
)
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ALAN BLAKE, et al.,)
)
)
Defendants.)

MEMORANDUM AND ORDER

This matter is before the Court on plaintiff's motion to proceed in forma pauperis.

Upon review of the financial affidavit, the Court has determined that plaintiff is unable to pay the filing fee. 28 U.S.C. § 1915. Consequently, the motion will be granted.

Plaintiff brings this action under 42 U.S.C. § 1983 for alleged interference with his right of access to the courts. Named as defendants are Alan Blake and the Missouri Department of Mental Health. Upon review of the complaint, the Court finds that the complaint survives initial review as to defendant Blake under 28 U.S.C. § 1915(e). However, the complaint fails to state a claim against the Missouri Department of Mental Health because an agency exercising state power is not a "person" subject to a suit under § 1983. E.g., Barket, Levy & Fine, Inc. V. St. Louis Thermal Energy Corp., 948 F.2d 1084, 1086 (8th Cir. 1991). As a result, the Court will dismiss this action as to the Missouri Department of Mental Health. 28 U.S.C. § 1915(e).

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion to proceed in forma pauperis [#4] is **GRANTED**.

IT IS FURTHER ORDERED that the Clerk shall issue process or cause process to issue on the complaint as to defendant Alan Blake.

IT IS FURTHER ORDERED that the Clerk shall not issue process or cause process to issue on the complaint as to defendant Missouri Department of Mental Health.

An Order of Partial Dismissal shall accompany this Memorandum and Order.

Dated this 15th day of May, 2008.

/s/Donald J. Stohr

UNITED STATES DISTRICT JUDGE